

Commercial Paper FE Texas.

There are two basic instruments for commercial paper: (1) Notes; and (2) Drafts or bill of exchange.

Notes have two parties who make them up: (1) Maker; and (2) Payee.

Drafts on the other hand have three parties which make them up: (1) The drawer; (2) The drawee; and (3) The payee.

The elements of negotiability: (1) Written and signed; (2) Unconditional; (3) Promise or order; (4) To pay a fixed amount of money (with or without interest); (5) Is payable to order or bearer; (7) Contains no unauthorized promise or undertaking.

This can be remembered in two ways: (1) UPAIOC; or (2) Under Pants Always Include Old Crumbs.

To tell if an instrument is conditional and thus non-negotiable: (1) It expressly states a condition for payment; or, (2) States that the promise or order is subject to or governed by another writing.

If an instrument recites the consideration, then it is not conditional.

If a note fails to state a time for the payment or states that it is payable on demand , or on sight, a note is payable on demand.

To determine whether an instrument is payable at a definite time look to see if it is payable: (1) On a fixed date; (2) After elapse of a fixed period; (3) At a time Readily Ascertainable when issued.

Now comes the holder in due course rule which states: If a negotiable instrument is transferred for value, in good faith, without notice of any defenses or claims, the holder in due course can force someone to pay on the instrument.

one becomes a holder through a transfer that qualifies as a negotiation.

The steps that are needed to negotiate an instrument depend upon whether the instrument is payable to bearer or to order.

Bearer instruments are negotiated by merely transferring possession.

If less than all signatures of all payees and special indorsees are on the instrument, the right to enforce the instrument does not pass.

If an instrument is payable to multiple payees jointly, then each payee must endorse; and it will apply severally to any payee.

There are 5 types of indorsements: (1) Special; (2) Blank; (3) Qualified; (4) Unqualified; and, (5) Restrictive or unrestrictive.

A special indorsement names a particular person as a payee.

A blank indorsement does not name a particular person as payee.

A qualified indorsement has the words "without recourse" which limits contract liability on the indorser.

A restrictive indorsement is an indorsement containing any other language added. Such indorsements are generally ineffective at limiting a transfer or negotiation.

An anomalous indorsement is an indorsement made by a non-holder, who then becomes liable on the instrument.

The status of a holder is one who has possession and the right to enforce.

There are two steps to apply to determine whether a person is a holder in due course: (1) Determine whether the person is a holder; and then (2) determine whether they hold in due course.

Due course requires that the holder takes for value, in good faith, and without notice.

If a person does not qualify as a holder in due course, but was a transferee of the holder in due course, then he has the same rights as a holder in due course, unless he was a party to a fraud involving the instrument.

Value is: (1) Performance of agreed upon consideration; (2) Acquisition by lienholder or security interest; (3) Payment or security for antecedent debt; (4) Another negotiable instrument;

(5) Irrevocable obligation.

If a person fails to pay only part of the value then he is only a holder in due course to the portion of the amount he paid.

Facts constituting notice include: (1) Instrument overdue; (2) Unauthorized signature or alteration; (3) Claims to the instrument; (4) Defenses or claims in recoupment.

Notice must be received in such a time and manner as to give a reasonable opportunity to act on it.

Certain transactions preclude the holder in due course status. This includes taking an instrument by: (1) Legal process; (2) Purchase at a judicial sale; (3) Acquiring it as a successor in interest to an estate or other organization; (4) Purchasing as bulk transaction not in the regular course of business of the transferor.

Holder in Due course status is determined during the later of: (1) the moment the instrument is negotiated; (2) when the holder gives value.

The shelter rule is where a transferee acquires whatever rights the transferor had. Except where the transferee is a party to fraud or illegality affecting the instrument.

A claim is an affirmative right to a negotiable instrument because of superior ownership.

Real defenses are defenses that may be asserted against all holders.

There are 11 real defenses: (1) Forgery; (2) Fraud in the factum; (3) Alteration of instrument; (4) Capacity; (5) Infancy; (6) Illegality; (7) Duress; (8) Discharge in bankruptcy; (9) Statute of limitations; (10) Accommodation defenses; (11) Discharges known to a Holder in Due Course.

The general statute of limitations for commercial paper issues is generally three years. It is Six years for actions on notes which are payable at a definite time or on demand or certificates of deposit.

An accommodation party is a surety, who by signing the instrument incurs liability without being a direct beneficiary.

A mnemonic for the real defenses is FAIDS. That is: (1) Fraud; (2) Alteration; (3) Adjudicated incompetency; (4) Infancy and illegality; (5) Duress discharge; (6) statute of limitations and suretyship.

The allegation that the contract out of which the commercial paper arose was not properly or fully performed is a personal defense. Therefore it will not avail against a holder in due course.

If a negotiable instrument is not supported by consideration, that will be a defense except against a holder in due course.

Simple contract defenses are not available against a holder in due course, but they may be raised against all other defendants.

The parties who may enforce a negotiable paper are as follows: (1) A holder; (2) A non-holder in possession with rights of a holder; (3) A person not in possession but entitled to enforce (such as where the paper is lost, stolen, or destroyed).

The elements of a prima facie case are: (1) The signatures are genuine; (2) The person presenting the instrument is entitled to enforce it.

The presumption for proof of signatures is that the signatures are presumed to be valid unless they are specifically denied.

The first issue when dealing with the liability of parties is to identify the status of each party.

The general rule of liability on an instrument is that one may only be held liable if the signature or a signature of an authorized representative, such as an agent, is on the instrument.

Those who may be held liable on an instrument are: (1) The maker of the note; and, (2) The indorser, who is only secondarily liable.

The three prerequisites for a holder to look to an indorser for payment are the following: (1) Presentment; (2) Dishonor; (3) notice of dishonor.

Notice of dishonor must be given to an indorser within 30 days after the deadline.

Notice of dishonor is excused by: (1) Delay: When caused by circumstances beyond the control of the notified person who exercised reasonable diligence; (2) Entirely excused: When the terms on the instrument make it unnecessary, or the obligor waives the notice requirement.

The indorser is liable for the full amount, at the time of indorsement.

Any person who transfers the instrument for consideration makes a warranty.

If a transfer is by indorsement, then the warranty runs to all subsequent holders. If however, the transfer is not by indorsement, then the warranty only runs to the immediate transferee.

A transferor warrants the following six things: (1) Entitled to enforce; (2) Signatures are genuine; (3) Instrument is not materially altered; (4) No defenses; (5) No knowledge of any insolvency proceedings; (6) Creation was authorized.

If a transfer takes place without consideration then nothing is warranted.

When considering the liability of an insider there are two liabilities to consider: (1) Contractual liability; and (2) Warranty liability.

Checks may not be drawn without recourse.

If a draft is dishonored, then the drawer is obliged to pay according to the draft's terms.

A drawee has liability on a draft only when the drawee signs an instrument.

The circumstances where a bank cannot charge an account are as follows: (1) Forgery of the drawer's signature; (2) Altered amount; (3) Where the bank pays the wrong person; (4) Item is postdated and the customer notifies the bank of postdating.

A written stop payment order is binding for six months, at which point it may be renewed.

The death of a customer revokes the bank's authority to pay on a check when the bank: (1) Knows of the death; (2) And has

reasonable time to act on the knowledge. The bank may continue paying for 10 days.

The general rule for forged or unauthorized signatures is that they are valid only as the signature of the forger.

the exceptions where a forged signature will be valid are: (1) Fictitious payee's signature forged; (2) Entrusted employee forges a signature; (3) Negligence contributes to the forgery; (4) Bank statement rule violated; (5) Bank certificates

There are three general issues for payment: (1) When can the maker or acceptor safely pay?; (2) What if the maker or acceptor pays by mistake; and, (3) What if an acceptor finds she should not have accepted?

the difference between when a bank pays on a forged drawer's signature and a forged indorser's signature is that payment is final if made on a forged drawers signature.

The elements of the unaccepted draft presentment warranty is as follows: (1) entitled to enforce; (2) No knowledge that the drawer's signature is unauthorized; (3) No material alteration; (4) For remotely created instruments, they must have been authorized by the drawer.

The presentment warranty on any instrument other than an unaccepted draft is that the presenter is entitled to enforce.

The effect of discharge of a certified cashier's or teller's check is that the obligation is discharged, but the indorser liability is not affected. On the other hand the effect of a discharge of other instruments, the obligation is merely suspended until the instrument is paid or certified.